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10 DANIEL SANTIAGO

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

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UNITED STATES OF AMERICA,) CR-12-0665 RS
Plaintiff,) STIPULATION AND [PROPOSED]
vs.) ORDER VACATING HEARING DATE AND
DANIEL SANTIAGO,) BRIEFING SCHEDULE ON MOTION TO
Defendant.) DISMISS, SETTING HEARING DATE AND
) BRIEFING SCHEDULE ON <i>DAUBERT</i>
) MOTION AND EXCLUDING TIME
) PURSUANT TO 18 U.S.C. §§3161(h)(7)(A)
) AND (h)(7)(B)(iv) OF THE SPEEDY TRIAL
) ACT

The United States of America, by its attorneys, Melinda Haag, United States Attorney for the Northern District of California, and Special Assistant United States Attorney ("AUSA") Marc Price Wolf, and defendant DANIEL SANTIAGO, by his attorney, Peter Goodman, hereby submit this Stipulation and [Proposed] Order requesting that the Court vacate the briefing schedule and the hearing date of October 8, 2013, set on August 30, 2013, for a defense motion to dismiss this case. Instead, the parties request that the Court set a briefing schedule and hearing date for a defense *Daubert* motion to exclude the results of the DNA testing performed by the Serological Research Institute which the government will seek to introduce at the third trial it intends to pursue. The parties believe that the decision on the *Daubert* motion will have a significant impact on the third trial. The parties believe the *Daubert* motion should be heard before the

1 motion to dismiss because the outcome of the *Daubert* motion will affect the evidence
2 the government intends to introduce at the third trial and the defendant's argument that
3 a third trial is inappropriate. The parties are proposing the following briefing schedule
4 for the *Daubert* motion: 1) the defense will file its opening brief on October 18, 2013;
5 2) the government will file its opposition on November 15, 2013; 3) the defense will file
6 its reply brief on November 22, 2013; 4) a hearing on the motion will occur on Tuesday,
7 December 3, 2013, at 2:00 p.m. The parties are requesting a lengthy briefing schedule
8 owing to the complexity of the issues involved in amplified DNA testing, the need to
9 obtain expert declarations on the acceptance of such testing in the scientific community
10 and the need for additional DNA testing on any remaining DNA samples that may exist.

11 On August 30, 2013, when the briefing schedule and hearing date on a defense
12 motion to dismiss were set by this Court, the defendant did not agree to an exclusion of
13 time. Immediately after appearing before this Court, defendant SANTIAGO appeared
14 before Magistrate/Judge Cousins who released him to the Geo Care halfway house on
15 a \$50,000 personal recognizance bond with a condition requiring him to remain there
16 except to meet with counsel and appear in court. Given his release from custody, the
17 defendant is agreeable to excluding time from the date of this Stipulation until the date
18 all pretrial motions in his case are decided.

19 SO STIPULATED

20 DATED: September 20, 2013

22 MELINDA HAAG
23 United States Attorney

24 By: _____ /s/
25 MARC WOLF
26 Assistant United States Attorney

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1 SO STIPULATED

2 DATED: September 20, 2013

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5 /s/
6 PETER GOODMAN
7 Attorney for Defendant
8 DANIEL SANTIAGO

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ORDER VACATING HEARING DATE AND BRIEFING SCHEDULE
ON MOTION TO DISMISS, SETTING HEARING DATE AND BRIEFING
SCHEDULE ON DAUBERT MOTION AND EXCLUDING TIME PURSUANT
TO 18 U.S.C. §§3161(h)(7)(A) and (h)(7)(B)(iv) OF THE SPEEDY TRIAL ACT

Based on the stipulation of the parties and good cause appearing, IT IS HEREBY ORDERED that the briefing schedule and hearing date on the defense motion to dismiss set on August 30, 2013, are hereby vacated. Instead, the following briefing schedule and hearing date are set on the defense *Daubert* motion: 1) the defense will file its opening brief on October 18, 2013; 2) the government will file its opposition on November 15, 2013; the defense will file its reply brief on November 22, 2013; 4) a hearing on the motion will occur on Tuesday, December 3, 2013, at 2:00 p.m.

Based on the stipulation of the parties and good cause appearing, the Court finds that time should properly be excluded pursuant to 18 U.S.C. §§3161(h)(7)(A) and (B)(iv) of the Speedy Trial Act from September 20, 2013, until the date all pretrial motions in this case are decided in the interests of justice and to ensure effective assistance of counsel.

DATED: 9/20/13


RICHARD SEEBORG

UNITED STATES DISTRICT COURT JUDGE